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*Assessors v. Ala. C. R. R.*, 59 Ala. 551. If National Banks as a class had suffered they would have obtained relief. *Cummings v. Nat. Bank*, 101 U. S. 153. But because the class of sufferers, *i. e.*, all personal property holders, is so very large, they are without redress. The result certainly does not appear logical. Could a statute providing that all personalty shall be assessed at 100 per cent of its value and all realty at 60 per cent be passed without repealing by implication the section quoted above, or — had that section been in the Constitution — without being unconstitutional? Surely not. Yet, as the validity of an assessing law and the legality of an assessment must be tested by the same general principles, this decision would imply an affirmative answer to the question. Undoubtedly there are strong arguments in favor of the result reached. It is common knowledge that much personalty escapes taxation entirely, and that a decreased assessment upon realty does therefore approximate justice. But a system that lets honest personal property holders suffer, as this system does, cannot be the best. Approximate equality in taxation can be reached in other ways than by disregarding enacted laws. Let the legislatures, whose province it is, determine what laws will best attain justice, and let the courts enforce those laws unflinchingly. There are apparently no decisions contrary to the principal case; but for language opposed to it in spirit, see *Dumdee v. Parrish*, 24 Fed. Rep. 197; *Bank v. Hines*, 3 Oh. St. 1; WELTY, ASSESSMENTS, § 185.

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TORT CLAIMS AGAINST FOREIGN GOVERNMENTS. — By the seventh article of the Treaty of Paris, December 10, 1898, the United States and Spain mutually relinquished all claims of citizens or subjects of the one country against the government of the other; and the United States undertook to adjudicate and settle all claims of its citizens against Spain. In pursuance of this undertaking, Congress by Act of March 2, 1901, constituted a commission to receive and examine the claims of citizens of the United States against Spain. Before this Commission, one McCann who had been a seaman aboard the United States Battleship *Maine* at the time she was destroyed in Havana Harbor, sued for damages for injuries received in the explosion. The commission dismissed the claim on the ground that the injury done by the destruction of the *Maine* was a national injury, and that therefore no individual seaman acquired any claim against Spain. *McCann v. United States*, Before Spanish Treaty Claims Commission [1902]. The jurisdiction of the commission extends only to claims of citizens of the United States against Spain which existed at the date of the Treaty of Paris. Any possible claim which the petitioner may have had against Spain must be based on one of two grounds: either that Spain intentionally caused the explosion, or that she negligently permitted it to happen.

The Battleship *Maine* was present in Havana Harbor on an official errand of the United States. If it be assumed that the *Maine* was intentionally destroyed by Spain, the act of Spain can have only one possible significance. Without resort to the fiction of extraterritoriality, it can unqualifiedly be held that an attack on a vessel representing the United States is equivalent to an invasion of United States territory. It is an attack on the dignity of the United States as a sovereign independent state, the international equal of the attacking power. Such an act is an act of war in its very nature; and that nature is not changed because reasons of policy urge

the offended nation to overlook it, and not to declare war. See *Mr. Webster to Mr. Crittenden*, WHART. INTERNAT. L. DIG., § 21. If this is true, it follows that the petitioner has no claim; for there is a well-settled rule of international law that no citizen or subject gains a right against a belligerent for damages sustained in war between that power and his sovereign. See WHART. INTERNAT. L. DIG., § 224. The case, however, cannot be disposed of on that ground, for there is no evidence in the report of the Board of Inquiry to sustain the assumption that the *Maine* was intentionally destroyed.

On the remaining possible assumption that the *Maine* was destroyed by reason of the negligence of Spain, a similar result would be reached, and on reasoning more nearly in accord with the actual facts. Clearly, if the ship were destroyed negligently, the injury could not be considered a national injury, that is to say, an affront to the dignity of the United States as a sovereign power. The United States would in that case have no greater claim, except by comity, than any steamship company would have if its vessel were destroyed under similar circumstances; and seamen aboard the *Maine* could have no greater rights than American seamen aboard a merchant vessel. According to the *dicta* of the commission they would have even fewer rights. But even assuming that they would have equal rights, it is well settled that they are entitled to no greater protection or rights than the citizens or subjects of the local power. *New Orleans Riot*, SNOW'S CASES ON INTERNAT. L. 181. A Spanish citizen would have no cause of action against his own government if injured by the negligent explosion of a submarine mine. For it will not be seriously controverted that the setting and maintaining of submarine mines are governmental acts; and, consequently, for their negligent performance Spain would not be liable in tort. *Levy v. City of New York*, 1 SANDF. (N. Y.) 465; *Belknap v. Schild*, 161 U. S. 10, 17. It follows, then, that the petitioner in the principal case having no greater rights than a Spanish subject, could gain no claim against Spain. A short ground for disposing of the case might have been taken. The naval Board of Inquiry reported that it was unable to obtain evidence "fixing the responsibility on any person or persons." Upon that finding, Spain was never liable, and no right ever arose in favor of the petitioner.

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## RECENT CASES.

ADMINISTRATIVE LAW — RIGHT IN TORT AGAINST FOREIGN GOVERNMENT — BATTLESHIP MAINE CASES. — By Act of Congress, March 2, 1901, the Spanish Treaty Claims Commission was established to adjudicate and settle claims of citizens of United States against Spain which had been relinquished to Spain by the seventh article of the Treaty of Paris, December 10, 1898. Before this commission a seaman injured in the destruction of the Battleship Maine brought a claim for damages. *Held*, that he cannot recover. *McCann v. United States*, Before the Spanish Treaty Claims Commission [1902]. See NOTES, p. 137.

BANKRUPTCY — PRIORITY — CLAIMS FOR WAGES. — The Federal Bankruptcy Act, § 64 *b*, gives priority to claims for wages earned within three months before the commencement of bankruptcy proceedings, not to exceed three hundred dollars in amount; and further, to all debts entitled to priority under the laws of the state. The claims in question were for wages not earned within three months before the commencement of the bankruptcy proceedings, but would be entitled to priority under New York